STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 21, 2003
v	No. 241431 Wayne Circuit Court
LEO C. LOLLIO, Defendant-Appellant.	LC No. 01-006361-01

Before: Gage, P.J., and White and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions of assault with intent to commit armed robbery, MCL 750.89, and attempted carjacking, MCL 750.529a. Following a jury trial, he was sentenced to concurrent terms of seventy months' to fifteen years' imprisonment for the assault and one to five years' imprisonment for attempted carjacking. We affirm.

Defendant asserts that his convictions of both offenses, based on the same transaction, violates his right to be free from double jeopardy. A claim of double jeopardy presents a question of law that we review de novo. *People v Herron*, 464 Mich 593, 599; 628 NW2d 528 (2001). Both the United States and Michigan constitutions preclude placing a criminal defendant in jeopardy twice for the same offense. US Const, Am V; Const 1963, art 1, § 15. This prohibition applies to multiple punishments as well as multiple prosecutions for the same offense. *North Carolina v Pearce*, 395 US 711, 717; 89 S Ct 2072; 23 L Ed 2d 656 (1969); *People v Robideau*, 419 Mich 458, 468; 355 NW2d 592 (1984). In the case of multiple punishments, the defendant's protected interest is "in not having more punishment imposed than that intended by the Legislature." *Robideau*, *supra* at 485.

Defendant claims his convictions constitute double jeopardy under the "same transaction" test. However, that test deals with the validity of multiple *prosecutions* not multiple *punishments*. *People v Sturgis*, 427 Mich 392, 401-403; 397 NW2d 783 (1986). Defendant was not subjected to multiple prosecutions, thus the "same transaction" test does not apply.

The test for double jeopardy in a prosecution involving multiple punishments in a single proceeding for the same offense is to determine the intent of the Legislature. *People v Hurst*, 205 Mich App 634, 637; 517 NW2d 858 (1994). If the Legislature has so intended, "cumulative punishment of the same conduct under two different statutes in a *single* trial does not run afoul of

the Double Jeopardy Clause in either the federal or state system." *Sturgis*, *supra* at 403 (emphasis in original).

In *People v Parker*, 230 Mich App 337, 344-345; 584 NW2d 336 (1998), this Court held that "the Legislature intended to separately punish a defendant convicted of both carjacking and armed robbery, even if the defendant committed the offenses in the same criminal transaction." The *Parker* Court reasoned:

> Although both crimes involve property loss to a person, either a motor vehicle or other property, the Legislature designed each statute to prevent a different type of harm. It is clear from the language of the carjacking statute that the Legislature intended to prohibit takings accomplished with force or the mere threat of force. In contrast, it is clear from the language of the armed robbery statute that the legislature intended to prohibit takings accomplished by an assault and the wielding of a dangerous weapon. A further source of legislative intent is the amount of punishment expressly authorized by the Legislature. In the carjacking statute, the Legislature specifically authorized two separate convictions arising out of the same transaction.[1] . . . . From the subject and language of these statutes, we can conclude that the Legislature intended multiple punishments for violations of different social norms. [230 Mich App at 343-344. Citations omitted.]

Defendant attempts to distinguish *Parker* on the basis that the defendant in *Parker* stole both a car and a wallet at gunpoint, while, here, defendant attempted to steal only car keys. This Court, in *Hurst*, *supra*, rejected such a fact-specific analysis, and held that dual convictions of unlawfully driving away an automobile and armed robbery do not violate the rule against double jeopardy, even where the only item taken was the automobile. Instead the Court focused on legislative intent. *Hurst*, *supra* at 637-639.

Next, defendant claims that his convictions violate the Double Jeopardy Clause of the federal Constitution under the "same elements" test enunciated in *Blockburger v United States*, 284 US 299; 52 S Ct 180; 76 L Ed 306 (1932). That test bars prosecution or punishment under separate statutes unless each statute requires proof of at least one element that the other does not. *Blockburger*, *supra* at 304. Defendant argues that assault with intent to commit armed robbery and attempted carjacking are the same offense because they share all the same elements. This

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[1] The second clause of the carjacking statute, MCL 750.529a(2), states:

> A sentence imposed for a violation of this section may be imposed to run consecutively to any other sentence imposed for a conviction that arises out of the same transaction.

argument was rejected in *Parker*, *supra* at 344, and we see no reason to distinguish that analysis on the basis that the instant case involves conviction of *attempted* carjacking and *assault* with intent to rob being armed.

The assault statute and the carjacking statute contain manifestly different elements. Carjacking requires that the object taken be an automobile, whereas robbery may concern any property of the victim. See *Hurst*, *supra* at 638. Carjacking does not require an intent to permanently deprive the owner of his chattel. *Parker*, *supra* at 344, citing *People v Terry*, 224 Mich App 447, 454-455; 569 NW2d 641 (1997). Armed robbery, however, requires such intent. *Parker, supra* at 344, citing *People v King*, 210 Mich App 425, 428; 534 NW2d 534 (1995). Further, the assault statute requires proof that the defendant was armed, while the carjacking statute does not. Therefore, under the *Blockburger* test, carjacking and assault with intent to commit armed robbery have different elements and are not the same offense for double jeopardy purposes.

Affirmed.

/s/ Hilda R. Gage
/s/ Helene N. White
/s/ Jessica R. Cooper